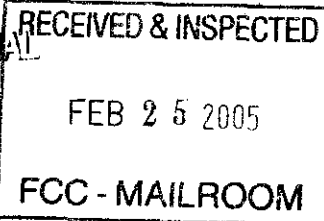


CC: 96-45

DOCKET FILE COPY ORIGINAL



Friday, February 25, 2005

Federal Communications Commission
Office of the Secretary
445 12th Street, S. W.
Room TW-A325
Washington, D.C. 20544

Dear Office of the Secretary:

Letter of Appeal to USAC

To Whom it may concern:

This letter shall serve as official notice that Southwest Communications, Inc. "SCI" is appealing USAC's Administrator's Decision on Contributor Appeal in a letter sent and dated Dec 28, 2004. This matter deals with our August 1, 2004 Form 499-Q Revision Rejection. The form 499-Q was rejected due to SCI's untimely filing on September 28, 2004. To back up, SCI filed it's initial Form 499-A Telecommunications Reporting Worksheet for 2004 on May 21, 2004 with the assistance of our tax compliance firm. Because we are new to the intricate tracking and reporting processes involved with the Universal Service Administrative Company, we did not file our 2004 2Q Form 499-Q due Aug. 2nd until Sept 28, 2004. Having received the Rejection Notice from USAC for Aug 2, 2004 2Q, SCI became strongly aware of the direct consequences of untimely filing and made sure that our Nov 1, 2004 3Q was filed timely.

I have attached a photocopy of the Form 499-Q rejection notice as requested. I have also included a spreadsheet of the Aug 1, 2004 Form 499-Q Contribution Analysis. The analysis details out the large difference between the Contribution Amount for the quarter as determined by estimated figures from USAC versus the actual figures as filed by SCI. Southwest Communication, Inc. disagrees with USAC's Form 499-Q rejection due to the following four reasons:

1. The Aug 1, 2004 Form 499-Q was SCI's initial quarterly filing ever. It's a new system, new forms, and intricate spreadsheets to set up to both track historical data and project future data.
2. SCI's overall revenues from 2003 to 2004 have fallen off dramatically as evidenced by the difference between USAC's estimated figures extrapolated from 2003 vs SCI's actual figures.
3. SCI's initial 2004 Form 499-A (2003 revenue figures) did not include allocation for

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List A B C D E

Telecommunications provided to other universal contributors for resale. This was due to SCI's inexperience in how to fill out the form and was only learned after the form was submitted. It has proven to be quite costly as we were unable to subtract out this revenue and had to pay USAC regardless. This problem was further compounded when USAC used our 2004 Form 499-A figures to estimate the Aug 1, 2004 Form 499-Q figures.

4. The primary reason SCI is appealing this decision is our financial inability to pay the USAC invoices resulting from overstated revenues. Included in this appeal are two Exhibits detailing the Contribution Amount invoiced by USAC vs collected by SCI. For Q4 2004, the Contribution Amount Over Charged by USAC comes out to \$59,505.79. Paying this liability will place a significant financial burden on SCI. This amount is four times the USF fees we collected during the quarter. An honest timely mistake was made, however SCI cannot afford to overcompensate the Universal Service Administrative Company for this mistake. SCI sent payment today to USAC on the invoices in the amount of \$14,866.73. This is the amount we collected over the quarter.

The 2005 Form 499-A does NOT provide remedy to SCI in the sense that we would be forced to over pay USAC almost \$60,000 today and would not receive adjustments or credits, as appropriate, on our invoices until August of this year, six months from now. Furthermore, at our current average of \$5,000 per month collected in USF Fees, it would take TWELVE MONTHS (July '05 thru June '06) from July and EIGHTEEN MONTHS from today to recoup the \$60,000 we are being overcharged as of today.

SCI is requesting that USAC carefully consider the facts and information presented and allow Southwest Communications, Inc's submitted quarterly figures to be used when calculating the Quarterly Contribution Amount due. We are small telecommunications company of only 21 employees attempting to make a living and stay in business while complying with all government agencies. I may be contacted at the number below to discuss this letter.

Appeal related information:

Legal Reporting Name: Southwest Communications, Inc.

Filer 499 ID: 824472

Contact Information Of Person Filing / Person to Discuss Appeal With:

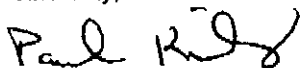
Paul Kirby

4100 N Mulberry Drive, Ste 100 Kansas City, MO 64116

816 298-4100 voice 816 298-4198 fax pkirby@scitel.net

CC Docket No. 96-45

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Kirby", with a stylized flourish at the end.

Paul F. Kirby
Operations Manager

Date	Description	Charges	Credits
	Previous Balance	\$49,626.57	
12/15/2004	Late Payment Fee	\$164.21	
12/15/2004	High Cost Support Mechanism Adjustment	\$3,327.26	
12/15/2004	Low Income Support Mechanism Adjustment	\$725.75	
12/15/2004	High Cost Support Mechanism Charges	\$11,203.20	
12/15/2004	Rural Health Care Support Mechanism Charges	\$123.08	
12/15/2004	Low Income Support Mechanism Charges	\$2,815.45	
12/15/2004	Rural Health Care Support Mechanism Adjustment	\$49.42	
12/15/2004	Schools & Libraries Support Mechanism Adjustment	\$1,312.33	
12/15/2004	Schools & Libraries Support Mechanism Charges	\$5,189.46	
	BALANCE DUE USAC ON 01/14/2005	\$74,536.73	

Transactions occurring after 12/15/2004 are not reflected on this statement.

The Balance Due on this Statement represents your mandatory contributions to universal service support and constitutes a Debt owed to the United States as defined by 31 U.S.C § 3701, the Debt Collection Act of 1982 (Public Law 97-365), and the Debt Collection Improvement Act of 1996 (Public Law 104-134), as amended (the DCIA) and any amendments thereto. This Statement constitutes a demand for payment of the Balance Due in accordance with and pursuant to Federal Communications Regulations (47 C.F.R. § 1.1911) and the DCIA.

Statement Date	Invoice Number	Filer 499 ID	Balance Due USAC
12/22/2004	UBD0000134937	824472	\$ 74,536.73
FORM 499Q DATA		PAYMENT INFORMATION	
This month's support mechanism charges were calculated using an FCC contribution factor of 0.089000 and the following revenue data:		Payment must be received by 01/14/2005 to avoid late payment charges.	
<u>August 2004 499Q</u>		Please remit ACH payments in a CCD+ format to ABA #071000505, Account #5590045653.	
120b	\$694,797.75	Payments must include your Company Name, Filer 499 ID, and Invoice Number to ensure timely posting.	
120c	\$18,132.75		
If the figures do not correspond with your records, please contact the 499 Data Collection Agent.			

Exhibit B

Southwest Communications, Inc.

Taxes Collected

2004 Form 499Q Q4

State	Tax Juris	Tax Name	Tax ID	Juris Sales	Amount Taxable	Amount Non Taxable	Tax Exempt	Tax Rate	Tax Due
10/27/04	FE	Federal							
		Federal Excise Tax	1	194,891.83	95,008.96	73,889.78	25,995.18	0.0300	2,850.22
	FE	Federal	50272	189,661.08	59,237.35	108,299.18	22,124.66	0.0890	5,272.22
	FE	Federal	50512	189,661.08	71,304.74	108,299.18	10,057.27	0.0022	155.41
		North American Numbering Plan Surcharge	42540	189,661.08	91,453.62	72,665.28	25,542.27	0.000021	1.76
	Sub Total:								
11/27/04	FE	Federal							
		Federal Excise Tax	1	179,590.36	115,446.78	40,100.51	24,043.12	0.0300	3,463.43
	FE	Federal	50272	173,174.77	59,246.03	82,354.26	21,574.53	0.0890	5,272.96
	FE	Federal	50512	173,174.77	71,716.78	82,354.26	9,103.78	0.0022	156.23
	FE	Federal	42540	173,174.77	107,341.81	42,833.07	23,199.94	0.000021	2.17
	Sub Total:								
12/27/04	FE	Federal							
		Federal Excise Tax	1	175,856.32	100,838.45	52,004.99	23,024.57	0.0300	3,025.16
	FE	Federal	50272	170,439.77	48,566.01	100,445.87	21,438.00	0.0890	4,321.55
	FE	Federal	50512	170,439.77	60,524.12	100,445.87	9,469.89	0.0022	131.86
	FE	Federal	42540	170,439.77	95,465.13	52,767.24	22,207.45	0.000021	1.89
	Sub Total:								
Totals		Federal Excise Tax			550,338.51	311,292.19	165,995.28	0.0300	9,338.81
		Federal Universal Service Fund			533,275.62	203,545.64	301,099.31	0.0890	14,866.73
		FCC Common Carrier Regulatory Fee			533,275.62	203,545.64	301,099.31	0.0022	443.50
		North American Numbering Plan Surcharge			533,275.62	284,260.56	168,065.59	0.000021	5.82

FCC Form 499-Q

Line	Description	Total	INTER	INT'L
115	Resellers	65,187	41,641	3,747
116	End Users	468,138		
117	All Other	17,063		
118	Gross-billed	550,339		

Contribution Amount (Invoiced by USAC)	\$74,372.52
Contribution Amount (Collected by SCI)	\$14,866.73
Contribution Amount (Over Charged)	\$59,505.79



Universal Service Administrative Company

Administrator's Decision on Contributor Appeal

December 28, 2004

BY FEDERAL EXPRESS

Paul F. Kirby
Communications Manager
Southwest Communications, Inc.
4100 Mulberry Drive, Suite 100
Kansas City, MO 64116

Re: Southwest Communications, Inc. (Filer ID # 824472)

Dear Mr. Kirby:

By your letter dated December 6, 2004 and submitted on behalf of Southwest Communications, Inc. (SCI), you requested review of a decision of the Universal Service Administrative Company (USAC) in accordance with 47 C.F.R. Section 54.719(b) (Request or Appeal). USAC has completed its evaluation of SCI's Request and, for the reasons set forth below, affirms its decision and denies SCI's Appeal.

Background:

SCI is requesting that USAC accept its late-filed quarterly Telecommunications Reporting Worksheet (Worksheet).¹ FCC regulations in force during the relevant time period required contributors to file Worksheets both annually and quarterly and required USAC to bill contributors based on reported revenues. USAC is required to estimate revenues for carriers that fail to file the required worksheets and to bill those carriers based on the estimated revenue. *See generally* 47 C.F.R. Part 54. FCC regulations do not require USAC to accept any late-filed revisions to the Universal Service Worksheets. The Form 499-Q at issue in this Appeal had a due date of August 2, 2004, with an FCC-established 45-day revision window of September 17, 2004.

SCI did not timely submit an original Form 499-Q, therefore USAC, as FCC regulations require, estimated the form and posted the resulting charges to SCI's October, November, and December 2004 invoices. On October 1, 2004, after the 45-day revision window of

¹ The quarterly and annual Worksheets are known respectively as FCC Form 499-Q (Form 499-Q) and FCC Form 499-A (Form 499-A).

Paul F. Kirby
Communications Manager
Southwest Communications, Inc.
December 28, 2004
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September 17, 2004 had closed, SCI submitted its August 2004 Form 499-Q. In accordance with FCC rules, USAC rejected the form as untimely filed.

Worksheet Revision Window

FCC regulations do not require USAC to accept late-filed revisions to the Worksheets. However, in order to improve the accuracy of the revenue reported and to help ensure that the USF remains both predictable and sufficient, the USAC Board of Directors has authorized USAC to allow contributors to file new or revised Annual Worksheets after the original due date.² USAC has consistently followed this policy by not permitting late-filed Annual Worksheets that have the effect of reducing contributors' USF obligations. Accordingly, since September 1, 1999, contributors have been permitted to file new or revised Annual Worksheets after the original due date and, with respect to reporting decreased revenues, for a period of up to 12 months from the initial due date of the Worksheet in question.

Similarly, for Quarterly Worksheets, up until November 2002, carriers had until the next Quarterly Worksheet due date to file revisions that result in reduced contributions. Effective February 2003, the FCC changed the revision window for all revisions to Quarterly Worksheets to 45-days.³ Thus, the Form 499-Q that was due August 2, 2004 (the first business day after August 1, 2004), and the deadline for revisions was 45 days later, or September 17, 2004.

Discussion:

The Form 499-Q had a due date of August 2, 2004, and an FCC-established revision window of 45 days, or September 17, 2004. SCI attempted to submit its Form 499-Q on October 1, 2004. Because SCI attempted to submit its Form 499-Q after the due date and outside of the revision window, USAC rejected the form consistent with FCC regulations.

² See Minutes of July 27, 1999, USAC Board of Directors Meeting; see also 47 U.S.C. § 254(b)(5).

³ See Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, Number Resource Optimization, Telephone Number Portability, Truth-in-Billing and Billing Format, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952 (2002) (Interim Contribution Methodology Order), ¶¶ 20-27, Appendix C, p.82 (February 2003 FCC Form 499-Q Instructions); see also *id.* at ¶36.

Paul F. Kirby
Communications Manager
Southwest Communications, Inc.
December 28, 2004
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For all Forms 499-Q, the filing deadline and notice of the revision window are clearly stated in the form instructions, are indicated on the form itself, are discussed in a document entitled "Helpful Hints" that is included with the form, and are posted on USAC's website: www.universalservice.org. Every quarter, in advance of the filing date, USAC mails a copy of the upcoming Form 499-Q to every filer. In addition, questions concerning forms and revisions can be addressed to USAC via email at "Form499@universalservice.org".

Remedy:

Although SCI missed the window for submission of the Form 499-Q, SCI has a remedy. USAC's annual reconciliation process, based on SCI's 2004 annual revenue, is designed to provide SCI with a remedy in this instance. SCI is required to file a 2005 FCC Form 499-A reporting 2004 annual revenue. The annual true-up is designed to compare SCI's reported actual 2004 revenue and reconcile it with the reported 2004 projected collected revenue from the Forms 499-Q. Therefore, assuming, but not concluding, that SCI's fourth quarter monthly charges should be adjusted, SCI would receive adjustments or credits, as appropriate, on its invoices beginning in mid-2005.

Explanation of Decision:

Because SCI's submission was received on October 1, 2004, after the due date and after the closing of the 45-day revision window established by the FCC, USAC properly rejected the form as untimely. For the reasons discussed herein, USAC must deny SCI's appeal.

Decision on Appeal: Denied.

USAC hereby denies SCI's Appeal.

If you disagree with USAC's response to your Appeal, you may file an appeal with the FCC. Your appeal must be **POSTMARKED** within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via the United States Postal Service, you should direct the appeal to:

Federal Communications Commission
Office of the Secretary
445 - 12th Street, SW
Room TW-A325
Washington, DC 20554

Paul F. Kirby
Communications Manager
Southwest Communications, Inc.
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Documents sent by Federal Express or any other express mail should use the following address:

Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, MD 20743
(8:00 A.M. – 5:30 P.M. ET)

For hand-delivered or messenger-delivered items, use the following address:

Federal Communications Commission
Office of the Secretary
236 Massachusetts Avenue, NE, Suite 110
Washington, DC 20002
(8:00 A.M. – 7:00 P.M.)

For security purposes, hand-delivered or messenger-delivered documents will not be accepted if they are enclosed in an envelope. Any envelopes must be disposed of before entering the building. Hand deliveries must be held together with rubber bands or fasteners.

Appeals may also be submitted to the FCC electronically, either by the Electronic Comment Filing System (ECFS) or by fax. The FCC recommends filing with the ECFS to ensure timely filing. Instructions for using ECFS can be found on the ECFS page of the FCC web site. Appeals to the FCC filed by fax must be faxed to 202-418-0187. Electronic appeals will be considered filed on a business day if they are received at any time before 12:00 A.M. (midnight), Eastern Standard Time. Fax transmissions will be considered filed on a business day if the complete transmission is received at any time before 12:00 A.M.

Paul F. Kirby
Communications Manager
Southwest Communications, Inc.
December 28, 2004
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Please be sure to refer to CC Docket No. 96-45 on all communication with the FCC. The appeal must also provide your company's name and Filer ID, plus necessary contact information, including the name, address, telephone number, fax number, and e-mail address of the person filing the appeal. Unless the appeal is by ECFS, please include a copy of the decision at issue.

Sincerely,

USAC

Universal Service Administrative Company

cc: Tom Putnam, and Regina Dorsey, FCC Office of Managing Director
Cathy Carpino, FCC Wireline Competition Bureau
Hillary DeNigro and Eric Bash, FCC Enforcement Bureau